

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TAMERA SHELLEY QUIBELL,

Defendant-Appellant.

UNPUBLISHED

December 13, 2005

No. 255800

Macomb Circuit Court

LC No. 2001-003238-FH

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from a sentence of four to twenty years imposed on her plea-based conviction of bank robbery, MCL 750.531, following revocation of probation. We remand for resentencing. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Defendant was charged with bank robbery for an incident that occurred on September 13, 2001. On December 10, 2001, defendant pleaded guilty in exchange for the prosecutor's agreement that the sentence should not exceed one year in jail. The parties noted that the guidelines established a minimum sentence range of ten to nineteen months. The trial court accepted defendant's plea and sentenced her to three years' probation, with the first ten months in jail. In March 2003, defendant was charged with violation of probation because she had tested positive for cocaine and failed to meet other conditions of probation imposed by the trial court. On May 29, 2003, defendant pleaded guilty to violation of probation. The updated presentence report indicated that defendant had not reported regularly to her probation officer and had picked up new criminal charges, including possession of less than twenty-five grams of cocaine and first-degree home invasion. The probation department recommended two to twenty years in prison, noting that while the guidelines were zero to seventeen months, "they do not apply to probation violation[s]". The trial court imposed a minimum sentence of four years. Defendant contends that the trial court was required to impose a sentence within the guidelines absent a substantial and compelling reason for a departure. She asserts that because the trial court exceeded the guidelines and did not state any reason for its departure, she is entitled to re-sentencing.

II. STANDARD OF REVIEW

The application of the statutory guidelines is reviewed de novo on appeal. *People v Cook*, 254 Mich App 635, 638; 658 NW2d 184 (2003).

III. ANALYSIS

The court must impose a minimum sentence within the guidelines range unless a departure from the guidelines is permitted. MCL 769.34(2). The guidelines set a minimum sentence range of zero to seventeen months. When the upper limit of the applicable guidelines range is eighteen months or less, “the court shall impose an intermediate sanction unless the court states on the record a substantial and compelling reason to sentence the individual to the jurisdiction of the department of corrections.” MCL 769.34(4)(a). An intermediate sanction does not include a prison sentence. *People v Stauffer*, 465 Mich 633, 635; 640 NW2d 869 (2002).

The statutory sentencing guidelines apply to sentences for all enumerated felonies, including sentences imposed after a conviction of probation violation. *People v Hendrick*, 261 Mich App 673, 679-680; 683 NW2d 218 (2004), rev’d in part on other grounds 472 Mich 555 (2005). *Hendrick, supra*, applies retroactively. *People v Parker*, ___ Mich App ___, ___ NW2d ___ (2005). Here, the trial court exceeded the guidelines by imposing a prison sentence without stating a substantial and compelling reason for doing so because it apparently “did not recognize that it was imposing a sentence that represented a departure from the sentencing guidelines.” *People v Johnigan*, 265 Mich App 463, 477-478; 696 NW2d 724 (2005). While there may be substantial and compelling reasons for exceeding the guidelines, see e.g., *Hendrick, supra* at 565 (“a defendant’s conduct while on probation can be considered as a substantial and compelling reason for departure”); *People v Schaafsma*, 267 Mich App 184, 186; ___ NW2d ___ (2005) (a defendant’s “probation violation itself” may constitute a substantial and compelling reason for departure), we “cannot affirm a sentence on the basis that, even though the trial court did not articulate a substantial and compelling reason for departure, one exists in the judgment of the panel on appeal. Instead, in such a situation, the Court of Appeals must remand the case to the trial court for resentencing or rearticulation.” *People v Babcock*, 469 Mich 247, 258-259; 666 NW2d 231 (2003).

Remanded for resentencing. Jurisdiction is not retained.

/s/ Michael R. Smolenski

/s/ Bill Schuette